



Comptroller General
of the United States
Washington, D.C. 20548

149766

Decision

Matter of: Discount Machinery & Equipment, Inc.

File: B-253094

Date: August 2, 1993

Michael Ray for the protester.
Peter D. Butt, Jr., Esq., and Victoria D. Heiden, Esq.,
Department of the Navy, for the agency.
M. Penny Ahearn, Esq., and John M. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Agency properly rejected proposal as technically unacceptable and outside competitive range where request for proposals required offerors to submit sufficient technical literature to establish conformance with specifications and, for requirements at issue, protester submitted either no or conflicting descriptive literature, and therefore failed to meet this standard.

2. Agency's failure to inform protester of two proposal deficiencies did not prejudice protester since its proposal was properly rejected solely on the basis of two other proposal deficiencies of which the agency clearly notified the protester.

DECISION

Discount Machinery & Equipment, Inc., protests the rejection of its offer as technically unacceptable under request for proposals (RFP) No. N00600-92-R-3081, issued by the Department of the Navy for three vertical milling machines. The Navy rejected Discount's offer because the firm's submitted descriptive literature failed to establish conformance of its offered machines with the RFP specifications.

We deny the protest.

BACKGROUND

The RFP required offerors to furnish the machines in compliance with design and performance specifications contained in military specification MIL-M-80016C, dated September 30, 1988, and as amended for this solicitation. A

firm-fixed-price contract was to be awarded to the offeror submitting the lowest cost, technically acceptable proposal.

Of importance here, the solicitation instructed offerors to demonstrate in their technical proposals how they proposed to comply with the RFP requirements. In this regard, at a minimum the solicitation required offerors to (1) list on a separate sheet of paper each specification paragraph or subparagraph number, state "comply" or "exception," and "explain how the offeror complies or takes exception"; and (2) provide literature (brochures, photographs, as-built drawings or equivalent) describing the equipment to be provided. The solicitation warned that "offers which do not present sufficient information to permit complete technical evaluation by the government may be rejected."

The Navy received four initial proposals. Because all offerors failed to provide sufficient information to show compliance with the technical requirements, the agency requested and received a series of three revised proposals from three offerors, including Discount (the fourth offeror dropped out of the competition). In this regard, Discount's initial offer primarily consisted of a statement that the specifications in the RFP "will all be met or exceeded" and a three-page descriptive brochure that included a specification sheet for the offered equipment. After the initial evaluation, Discount was notified that it failed to follow the solicitation instruction and explain its compliance with or exception to each specification requirement. In response, Discount submitted a revised proposal which stated "comply" for the majority of the specification paragraphs, but failed to explain how its machine complied. The agency nevertheless evaluated Discount's revised proposal based on the information the firm had submitted, i.e., the specification sheet from the firm's initial offer.

After this second evaluation, the agency notified Discount of numerous deficiencies in its offered equipment, including size and capacity deficiencies (paragraph 3.4 of the military specification) at issue here. This requirement provided that various size and capacity features of the milling machine were not to be less than values specified in tables I and II of the specification. Specifically, the Navy notified Discount that its proposed machine did not comply with the requirements for longitudinal table travel and table power feeds, and that, as a result of these and the other deficiencies, its proposal was technically unacceptable but capable of being made acceptable.

In requesting second revised proposals, the agency notified Discount (as well as the other offerors) that it must cross-reference its compliance/exception statements to descriptive

literature backing up the statements. The agency further instructed that "[a] detailed response to each paragraph of the specification is required," that "[t]he response will include how the proposal plans to comply with each paragraph; an indication of 'will comply' only will not be acceptable," and that "[o]fferors which do not present sufficient information to permit complete technical evaluation by the government may be rejected."

In response, Discount submitted descriptive literature in the form of specification sheets different from those it previously submitted. However, Discount did not provide the requested descriptive literature cross-references for the size and capacity features of its machine. Consequently, the contracting officer sent Discount a facsimile stating the technically unacceptable areas of the firm's proposal, which included the previously mentioned size and capacity deficiencies, and reiterated that "cross referencing must be done for all paragraphs in [the specification]" in order to "allow for a complete, thorough, and accurate technical evaluation." In response, Discount submitted its third and final revised proposal. Addressing the size and capacity of its offered equipment, the firm stated that "[t]he VST 1-1/2 [the machine offered] will not be less than specified in table I or table II." Discount also submitted an operator's manual.

In evaluating Discount's final revised proposal, the Navy generally determined that the descriptive literature submitted, i.e., the specification sheets and operator's manual, failed to show compliance with the specifications or was contradictory, i.e., the specification sheets showed compliance while the operator's manual did not. Where there appeared to be contradiction, the Navy evaluated Discount's offer by giving precedence to the operator's manual, based on its view that such manufacturer published information, which is not customized for each sale, is generally more accurate than sales literature, such as the specification sheets.

As a result of the final evaluation, the agency determined that Discount's proposal was technically unacceptable with no chance of being made acceptable and eliminated it from the competitive range. By letter of March 25, 1993, the agency notified Discount of this determination, based on the firm's failure to comply with the two specific size and capacity requirements of the solicitation previously determined deficient--longitudinal table travel and table power feeds--along with two additional size and capacity

requirements--spindle nose to table dimension and quill feed range.¹ Discount filed an agency-level protest on March 29 and on the same date the agency made award to Modern Machinery Associates. By letter dated April 2, the agency denied Discount's agency-level protest, and this protest to our Office ensued.

Discount argues that its proposed machine in fact meets the agency's specifications, that the agency disregarded documentation that the firm included in its offer, and that its proposal therefore improperly was evaluated as unacceptable. Additionally, Discount contends that the agency improperly failed to raise the evaluated deficiencies during discussions.

In reviewing an agency's technical evaluation, we consider whether it was reasonable and in accord with the evaluation criteria listed in the solicitation. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203. In a negotiated procurement, an offeror must affirmatively demonstrate that its proposal will meet the government's needs where required by the solicitation. Electronic Comms., Inc., 55 Comp. Gen. 636 (1976), 76-1 CPD ¶ 15; Federal Business Sys., Inc., B-246514, Mar. 13, 1992, 92-1 CPD ¶ 283. Where, as here, a solicitation requires offerors to furnish information necessary to establish compliance with the specifications, an agency may reasonably find a proposal that fails to include such information technically unacceptable. Id.

TECHNICAL EVALUATION

Longitudinal Table Travel

Under table I of the specification, the required minimum longitudinal table travel (with power feed as required for the machine here) was 32 1/2 inches. Discount's offer, as revised, listed the paragraph number of the requirement (3.4) with the notation that its offered machine "will not be less than specified in table I or table II." However, the descriptive literature submitted by the firm, i.e., specification sheets and operator's manual showed Discount's machine did not meet the requirement. The specification sheets indicated that Discount's offered equipment had a longitudinal table travel with power feed of 32 inches, while the operator's manual indicated a longitudinal table

¹In its evaluation, the agency further determined that modification of the firm's machine to meet these requirements would constitute a prototype, nonstandard model, and as such would not comply with the RFP requirement for a manufacturer's current model.

travel of 31 7/16 inches. The machine therefore reasonably was evaluated as not complying with the 32 1/2-inch minimum.

Although the specification sheet indicates that an "extra long leadscrew for 36 inches longitudinal travel is available as an option and accessory," nothing in Discount's proposal indicated that the firm was offering this feature, despite the specific RFP instruction that offerors explain in their proposal how every specification paragraph would be satisfied. Thus, there is no indication that the agency disregarded information submitted in the firm's offer as revised. Rather, the clear indication was that Discount was not offering a compliant machine.

Table Power Feeds

Under table II of the specification, the required table power feeds (longitudinal, cross, and vertical axis) range was 1 to 35 inches per minute. Discount indicated in its second revised offer that its machine had "SERVO Power Feed"; however, the required ranges were not listed. The operator's manual also did not give any indication of the required table power feeds range. Based on the firm's failure to submit any descriptive literature addressing this requirement, the agency's evaluation of the firm's offer as noncompliant in this area was clearly reasonable.

We conclude that Discount's proposal properly was rejected on the basis of its noncompliance with the longitudinal table travel and table power feeds requirements, since these requirements undisputedly were material and mandatory.²

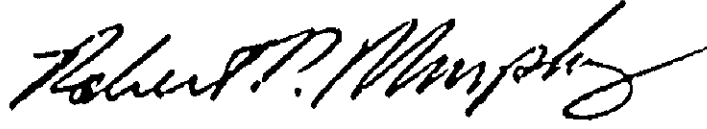
DISCUSSIONS

Discount maintains that the Navy failed to provide adequate discussions. This argument is without merit. Discount was advised of the longitudinal table travel and table power feeds deficiencies in two separate written notifications, and was given opportunities to revise its proposal after each notification; this clearly was adequate to lead Discount into these areas of deficiency, as required for adequate discussions. See Honeywell Regelsysteme GmbH, B-237248, Feb. 2, 1990, 90-1 CPD ¶ 149. While there is no indication in the record that the remaining two deficiencies, the throat dimension and the quill feed range, were specifically mentioned to the firm during discussions,

²The remaining two areas of deficiency, throat dimension and quill feed range, would have been proper additional bases for rejecting the proposal. While the specification sheets showed compliance in these two areas, the operator's manual showed noncompliant dimensions.

any failure by the agency in this regard did not prejudice Discount, since the other two deficiencies rendered its proposal unacceptable. See George A. Fuller Co., B-247171.2, May 11, 1992, 92-1 CPD ¶ 433.

The protest is denied.


for James F. Hinchman
General Counsel.